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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. [redacted] 12

UNITED STATES OF AMERICA, *Petitioner*

vs.

APPALACHIAN ELECTRIC POWER COMPANY, *Respondent*

MOTION FOR LEAVE TO FILE A MEMORANDUM IN SUPPORT OF VIRGINIA'S MOTION TO INTERVENE

ABRAM P. STAPLES,
Attorney General of Virginia.

Richmond, Virginia.
March, 1940.

IN THE

Supreme Court of the United States

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No. 674

UNITED STATES OF AMERICA, *Petitioner*

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MOTION FOR LEAVE TO FILE A MEMORANDUM IN SUPPORT OF VIRGINIA'S MOTION TO INTERVENE

To the Honorable, The Chief Justice and Associate Justices of said Court:

NOW COMES the Commonwealth of Virginia, by her Attorney General, Abram P. Staples, and prays leave to file the subjoined memorandum in support of her motion for leave to intervene as a party defendant or respondent in this cause.

The interest of Virginia is fully set forth in her said motion, and in said memorandum.

WHEREFORE, the Commonwealth of Virginia prays that this Honorable Court will accept the following memorandum for consideration.

Respectfully submitted,

ABRAM P. STAPLES,
Attorney General of Virginia.

Richmond, Virginia.
March, 1940.

IN THE

Supreme Court of the United States

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UNITED STATES OF AMERICA, *Petitioner*

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APPALACHIAN ELECTRIC POWER COMPANY, *Respondent*

MEMORANDUM IN SUPPORT OF VIRGINIA'S MOTION FOR LEAVE TO INTERVENE

Virginia respectfully submits the following propositions and authorities in support of her motion to intervene as a party defendant or respondent in this case:

1. States have property rights in the waters of interstate streams, the apportionment of which is a proper subject for compacts between them.

Hinderlider v. *LaPlatta, etc., Company*, 304 U. S. 92.

2. Virginia owns the bed of the New River involved in this case. See the finding in this case in the District

Court, *United States* v. *Appalachian Electric Power Company*, 23 Fed. Sup. 83, 101.

3. In the absence of cession to the United States by Virginia of jurisdiction, such ownership, even in waters navigable in interstate commerce, is subject only to a servitude under which Congress may "use the lands under the streams 'for any structure which the interest of navigation in its judgment may require'."

James v. *Dravo Contracting Company*, 302 U. S. 134, 140.

4. Virginia possesses rights as a sovereign or quasi-sovereign which are justiciable and entitled to the protection of the courts.

Hopkins, etc., Association v. *Cleary*, 296 U. S. 315;
Colorado v. *Toll*, 268 U. S. 228-230;
Missouri v. *Holland*, 252 U. S. 416, 431.

There is doubt as to the standing of the respondent corporation to raise the question of violation of the Tenth Amendment in the absence of objection by Virginia.

Tennessee Electric Power Company v. *Tennessee Valley Authority*, 306 U. S. 118, 143-4.

Respectfully submitted,

ABRAM P. STAPLES,
Attorney General of Virginia.

Richmond, Virginia.
March, 1940.